(28)

No. 619

In The
SUPREME COURT OF THE UNITED STATES OF AMERICA
OCTOBER TERM 1944

THE CREEK INDIANS NATIONAL COUNCIL BY C. W. WARD, PRESIDENT AND WASHINGTON ADAMS, Secretary-Treasurer, for and on behalf of themselves and 18765 other members of the Creek Tribe of Indians, and their heirs,

Petitioners,

vs.

SINCLAIR PRAIRIE OIL COMPANY, A CORPORATION, H G. BARNARD, N. B. FEAGAN, ARCH H. HYDEN, as administrator with the will annexed of the estate of SARAH C. GETTY, deceased, and BARDON OIL COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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SINCLAIR PRAIRIE OIL COMPANY, A CORPORATION, H G. BARNARD, N. B. FEAGAN, ARCH H. HYDEN, as administrator with the will annexed of the estate of SARAH C. GETTY, deceased, and BARDON OIL COMPANY,

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PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THIS HONORABLE COURT:

The petition of the Creek Indians and their heirs respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

The opinion of the Circuit Court of Appeals on pages 125 to 130 inclusive, and the Judgment, on page 131 of the Transcript of Record; and reported in 142 F. (2d) p. 842; August 7, 1944 Federal Reporter Second Series; was in favor of the defendants, respondents herein, confirming the judgment of the United States District Court for the Northern District of Oklahoma, for a summary judgment in favor of the Sinclair Oil Company, a corporation, H. G. Barnard; N. B. Feagan; and for judgment of dismissal on behalf of Arch H. Hyden, as administrator with the will annexed of the estate of Sarah C. Getty, deceased, and the Bardon Oil Company.

The original suit was filed in the State Court; the District Court of Creek County, Oklahoma by citizens of Oklahoma, and against other citizens of Oklahoma, and non-residents of Oklahoma.

The suit was to quiet title to 160 acres of land, as described in the petition, page 12 of the Record, located in Creek County, Oklahoma; and to recover the net value of the oil, gas and casinghead gas, produced and sold from said land, for the plaintiffs; said land being a part of the Original Grant to the Creek Tribe of Indians: on the ground and for the reason that all of said land not legally allotted or disposed of by deed or other transfer, is and remains the property of the plaintiffs or petitioners herein.

1. That this is an action alleging the unlawful and illegal enrollment of one Lete Kolvin, by the Daws Commission, as a Full Blood member of the Creek Tribe of Indians, on June 30, 1902, opposite Roll No. 8092, Census Card No. 2779; and that afterward, on March

10, 1903, a patent was arbitrarily, fraudulently, and through error and mistake of fact, and the law, and without examination or investigation, issued to, or in the name of Lete Kolvin, purporting to allot and convey to her the following described land, to-wit: the Southwest Quarter (SW¼) of Section Sixteen (16), Township Eighteen (18) North, Range Seven (7) East, part of the lands then belonging to the Creek Tribe of Indians, and now a part of Creek County, State of Oklahoma; the said Lete Kolvin having died February 1, 1899, in infancy, and prior to April 1, 1899; and that said deed or patent was not, and has not been to this day, delivered to the said Lete Kolvin.

2. That by an Amendment to their Amended Petition, these petitioners, eliminated the Creek Indians National Council as complainant, as shown at pages 114, 115 and 116 of the Record; after obtaining permission of the Court; in these words — "That the words, "National Council", "President", and "Secretary-Treasurer", in the caption to the complaint, and in the body of the complaint be considered stricken wherever they occur." Thus causing the Amended Complaint, as amended to read— "that the plaintiffs are all members of the Creek Tribe of Indians, Freedmen, and their heirs; and as such, under the Creek Agreement, Supplemental Agreement, and the Consistution and laws of the United States, and of the State of Oklahoma, are the legal and equitable owners of the land described herein and in the original petition and amended Complaint, and have the right, power and authority to sue for their rights as other citizens."

3. That the Amended Complaint as Amended, made this a suit by a few citizens of the United States and of the State of Oklahoma, for and on behalf of the many interested parties — a Class suit — as shown by paragraph II at page 115 of the Record.

4. After this suit was filed in the State Court in Creek County, Oklahoma, to recover the land heretofore described, quiet title to the same, and to recover the net value of the oil and gas taken from said land and sold, by the defendants, in the approximate sum of $8,000,000.00, it was removed to the United States District Court for the Northern District of Oklahoma, by the defendant Sinclair Prairie Oil Company, see p. 24 of Record.

Plaintiffs' Motion to Remand, as set out on pages 40 to 51 inclusive of the Record, was by the United States District Court, denied and overruled, p. 51 and 52 of Record.

5. That the District Court erred in the above ruling and the Circuit Court of Appeals of the Tenth Circuit erred in sustaining the lower Courts ruling.

6. That the Circuit Court of Appeals for the Tenth Circuit erred in sustaining the District Court's Judgment in favor of the defendants for a summary judgment and holding that the matter was *res judicata*, barring both the Creek Tribe and the individual members thereof from sustaining a subsequent action involving same issues as one which had been brought and dismissed without the knowledge or consent of any members of said tribe, and without any notice to them.

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. That the Circuit Court of Appeals for the Tenth Circuit, in this case has decided an important question of Federal Law, which has not been, but should be, settled by this Honorable Court.

2. That the Circuit Court of Appeals for the Tenth Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court.

3. That the Circuit Court of Appeals has decided an important question local to the Creek Indians, in a way probably in conflict with applicable local decisions.

4. That the Circuit Court of Appeals of the Tenth Circuit has approved the action of the District Court, in a departure from the accepted and usual course of judicial proceedings, as to call for this Courts power of supervision.

5. That the Circuit Court of Appeals of the Tenth Circuit has decided an important question of general law in a way probably untenable or in conflict with the weight of authority.

WHEREFORE your petitioners respectfully pray that a Writ of Certorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Tenth Circuit; Commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete Transcript of the Record and all proceedings in the case numbered and entitled on its Docket, No. 2802 — The Creek Indians National Council by C. W. Ward, President, and Washington Adams, Secretary-Treasurer, for and on behalf of themselves and 18765 other members of the Creek Tribe of Indians, and their heirs, APPELLANTS.

VS.

SINCLAIR PRAIRIE OIL COMPANY, a corporation; H. G. Barnard, N. B. Feagan; Arch H. Hyden, as Admin-

istrator with the will annexed of the estate of Sarah C. Getty, deceased; and Bardon Oil Company, APPELLES.

And that the said judgment of the Circuit Court of Appeals for the Tenth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

THE CREEK INDIANS NATIONAL COUNCIL BY C. W. WARD, PRESIDENT AND WASHINGTON ADAMS, SECRETARY-TREASURER, for and on behalf of themselves and 18765 other members of the Creek Tribe of Indian heirs.

By.....

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BRIEF OF PETITIONERS

REASON RELIED ON NO. 1:

"That the Circuit Court of Appeals for the Tenth Circuit, in this case, has decided an important question of Federal Law, which has not been, but should be, settled by this Honorable Court.

(A) The Circuit Court and the District Court seems to have overlooked the fact that the Record (at page 32) shows that the "Notice of Application for Removal", from the State Court to the Federal District Court, shows that same was not served upon the plaintiffs or their attorney of record.

(B) Sections 28 and 29 United States Judicial Code, as amended, quoting from Section 29 — "Written Notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declarations or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said District Court."

This law also supports our Reason No. 4.

REASON RELIED ON NO. 2:

"That the Circuit Court of Appeals for the Tenth Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court."

(A) Only one defendant, Sinclair Prairie Oil Company,

made application for removal of this cause from the State to the Federal Court.

Said Defendant did not comply with Masons Code Section 30, being U. S. Code Title 28, Sec. 73, which is the only statute providing for a removal of a cause involving the title to land from the State to the Federal Court — except — of course the Act of April 12, 1926, regarding the lands or rents or profits of restricted members, or their heirs, of the Five Civilized Tribes — and this defendant has not in any manner attempted to comply with this latter law.

In 195 U. S. 165, 49 L. ed. 142; 25 Supreme Court Reporter 6, in the case of *Hugh Stevenson, et al.* v. *William Fain, et al.*: Justice Fuller, discussing this section, said — after discussing the matter in detail, his conclusion was — "as Congress has not conferred jurisdiction on the Circuit Court over controversies between citizens of different states because, apart from diversity of citizenship, they may have claimed title by grants from different states, even if it had powers to do so, which is not conceded, the result is that the appeal must be dismissed."

Plaintiffs had plead in their petition, that the land in question was part of the Grant from the United States Government to the Creek Tribe of Indians, and it would have been necessary for the defendant to have set up its source of title, and complied with Sec. 73.

(C) That a resident corporation has been dissolved does not permit a non-resident defendant to remove a cause, in view of State Statutes permitting suit against against dissolved corporations.

Fidler v. *Western C. & M. Co.*, (D. C. Ark.) 33 F. (2d) 765.

(D) One of the reasons given in said defendants petition for removal was that — "The plaintiffs petition raised a Federal or Constitutional question."

If this is true, which we do not concede, they have been unable to point it out to us — and if so, it was necessary for all the defendants to join in the petition for removal. The decisions of our Federal Courts, and the Supreme Court of the United States, have been very explicit and consistent on that point.

In 178 U.S. 245—28 S.C.R. 854, *Chicago, Rock Island & Pacific Ry. Co., et al., Plaintiffs in Error* v. *Lissa Martin, Admx.*, on removal of cause, said— "All the defendants must unite in a petition for removal to Federal Court, under the Act of Congress of March 3, 1887, as corrected by the Act of August 13, 1888, where a joint cause of action is alleged against all the defendants." Same holding, *Hanrick* v. *Hanrick*, 153 U. S. 192; 38 L. ed. 685; 14 S. C. R. 835; *Torrence* v. *Shedd*, 144 U. S. 527; 36 L. ed. 528; 12 S. C. R. 726 — in this last case the Court cited numerous cases, and Justice Fuller held — among other things — "And in view of the language of the Statute we think the proper conclusions is that all the defendants must join in the application under either clause of the Statute."

The clauses referred to are, 1st, Constitutional or Federal Questions — and 2nd, To questions and controversies which are not separable.

(E) That more than fifty residents of the State of Oklahoma were joined as defendants, and that the plaintiffs are residents of the said state. That forty-eight of the defendants, mostly residents of the State of Oklahoma, have a judgment in case No. 19179 in the District Court of Creek County, Oklahoma, giving them title to the land involved herein, as well

as judgment for the net proceeds of the oil and gas sold from said land, a copy of said judgment is shown at pages 41 and 51 inclusive of the Record herein. Under the allegations of plaintiffs for removal (and the only one), is a lessee of one-half of the land in question; holding the same legal position as a renter in possession, and producing oil and gas and casinghead gas from part of said land. If his grantor or lessor's title is not good, then said defendants title to the lease is no good; and there is no legal way to separate or separately try the cause of action against the forty-eight judgment holders and the moving defendant, Sinclair Prairie Oil Company; and all the other defendants claim, or did claim at the time of filing plaintiff's petition, and that is what must be considered in the motion to remove, to be owners of and a right to recover an interest in said land, and the leases there on; and they claim further that another party or parties, is the rightful allottee. The interests of all the parties defendant are so interwoven, that the rights of one can not be ascertained without inquiring into the rights of all. And further, if the contentions of the plaintiffs are true, and they must be taken as true in considering the petition for removal then none of the defendants have any right, title or interest in and to the land in question or the proceeds of the sales of oil, gas and casinghead gas from the same, and the title has never passed from the plaintiffs herein.

(F) On the same day and at the same time, the defendant, filed the Transcript from Creek County, in the United States District Court for the Northern District of Oklahoma, it filed a Motion to make nine individuals and two corporations additional parties defendant, and at least eight or nine of those are

residents of the States of Oklahoma. In the petition filed in Creek County, the Amended Complaint filed after the removal, and the Amendment to the Amended Complaint, there is but one cause of action stated, and it is against all the defendants, all of whom are claiming title or some interest in the land and money involved herein, and all were involved in and parties to the suit in Creek County wherein judgment was rendered for about half of them and against the other half, which said case was appealed to the Supreme Court of the State of Oklahoma, and afterwards settled and dismissed.

(G) We can find no clearer statement of the rules and principle of what controversies are separable, than that given in 54 Corpus Juris at page 290, quoting: "A controversy is separable, within the meaning of the Stautes relating to the removal of causes from a state court to a federal court, where the right asserted against the defendant interested therein is separate and distinct from that asserted against his co-defendants, so that it may be wholly determined between such defendants and plaintiff; *and it is not separable where full and complete relief cannot be afforded without the presence of all the parties to the suit. Accordingly, where there is but one issue in the suit and can be but a single decree, there is no separate controversy. And the fact that there are separate remedies against the several parties does not create separate controversies where the cause of action against each is the same.* (Emphasis ours). Similarly the mere fact that one of two or more defendants has been served with process, or has made default in appearing or pleading, or has appeared and disclaimed, or that a separate defense exists, or that judgment has been rendered against one defendant before another or others have been served, does not

create a separable controversy; and no separable controversy is presented by the fact that two or more defendants are interested in separate parts of the same subject matter.

"The separate controversy must be real and substantial, and not a mere fanciful claim which has no support in the allegations of the petion or bill; and matters which are mere incidents to the principal subject matter of the suit do not prevent a separable controversy."

Following this Rule, there is approximately 100 citations supporting it, mostly from our Federal Courts, among them being *Miller* v. *Cliford*, 133 Fed. 880, 67 C. C. A. 52; *Golden* v. *Bruning*, 72 (2d), wherein the court said:

"The statute authorizing the removal of causes where the controversies are separable does not contemplate the splitting up into parts of a cause of action which plaintiff is entitled to prosecute as a single suit, simply because a part of the cause might be fully determined between the parties before the court, leaving the other part to be thereafter determined in another independent suit."

In *Gore* v. *Vinal*, 117 U. S. 347, and many other cases cited therein, it was held:

"Even though the defendants liability is joint and several, there is no separable controversy where plaintiff sues to establish only the joint liability."

In *Richardson* v. *Southern Idaho Water Power Co.*, 209 Fed. 949, 952, quoting;

"The plaintiffs right to retain the action in the state court should not be defeated by a mere failure, through inadvertance or want of skill, perfectly to state the facts constituting the cause of action, or

where there is some doubt whether or not the facts disclosed should, under the rule prevailing in the State Court, be held to constitute a cause of action against the resident defendant. In the one case the defect may be remedied by amendment, and in the other the plaintiff has the right to have the question passed upon by the State Court."

Anderson v. *Sharp*, 189 Fed. 247. — On the subject of causes which may not be removed for the reason that the Federal Court had no original jurisdiction, the holding was:

"A suit which is in form an action of trespass to try title, wherein plaintiff relies upon an equitable title, and not maintainable in the federal court at law because of the reliance of the equitable title, and not in equity because no equitable relief is sought."

(H) In *State of Georgia* v. *Southern Ry. Co.*, 25 Fed. Supp. 630. The Court held:

"A suit to enforce a right which takes its origin in the laws of the United States is not necessarily a suit arising 'under the constitution or laws of the United States', within the removal statute for a suit does not so arise unless it really and substantially involves a dispute respecting the validity, construction or effect of such law, upon the determination of which the result depends."

Interpreting Judicial Code No. 28, 28 U.S.C.A. 71. The same case holds:

"A suit brought upon a state statute does not arise under an Act of Congress or the Constitution."

(I) In *Pullman Co.* v. *Jenkins*, 59 S. Ct. 347 — from California — quoting:

"Where a non-separable controversy involves a

resident defendant, that the resident defendant has not been served with process does not justify removal by the non-resident defendant—under Jud. Code 28."

In *Young* v. *Schmidt*, 25 Fed. Supp. 905, the United States Court of Missouri held:

"An action is removable to Federal Court only where cause of action stated against non-resident is actually only cause of action involved."

In *Tolbert* v. *Jackson*, 99 F. (2d) 513, from C. C. (Ga.):

A. "The fact that seperate judgment may be entered in a joint cause of action does not create a 'separable controversy', subjects to removal from state to Federal Court."

And the same case holds:

"Separate defenses to a joint cause of action do not create a 'separable controversy', subject to removal from the state to the Federal Courts."

REASON RELIED ON NO. FOUR

"That the Circuit Court of Appeals of the Tenth Circuit has approved the action of the United States District Court, in a departure from the accepted and usual course of judicial proceedings, as to call for this Court's power of supervision."

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA HAD NO JURISDICTION OF THE MEMBERS OF THE CREEK TRIBE OF INDIANS IN NO. 14 EQUITY, WITHOUT COMPLYING WITH THE LAW AS TO NOTICE TO THEM.

In the Act of Congress of June 1898, known as the Curtis Act, Stat. L. 495 Section 2 it is provided: —

> "That when in the progress of any civil suit either at law or in equity, pending in the United States Court in any District in said (Indian) Territory, it shall appear to the Court that the property of any Tribe is in any way affected by the issues being heard, said Court is hereby authorized and REQUIRED TO MAKE SAID TRIBE A PARTY TO SAID SUIT BY SERVICE UPON THE CHIEF OR GOVERNOR OF THE TRIBES (emphasis ours) and the suit shall thereafter be conducted and determined as if said Tribe had been an original party to said action."

Therefore the unauthorized attempt to dismiss the Case No. 14 Equity with Prejudice without first making the Creek Tribe a party to said suit by service upon the Chief or Governor of said Tribe was void as to the said Creek Indians, as the Court had not acquired jurisdiction of said Indians, who are citizens the same as we are. It was not an act of Guardianship, but one of confiscation without due process of law, of the Indians property, and violates the 5th Amendment to the Constitution of the United States; and of Section 7 Article II of the Bill of Rights of the Constitution of the State of Oklahoma; and is not binding on the plaintiffs in this case, the petitioners herein.

This law has not been repealed, and was in full force and effect when No. 14 Equity case was filed February 25, 1925 (see p. 80 of Record) in the Eastern District of Oklahoma, and transferred and filed in the Northern District Court April 17, 1925.

We believe that the recent decision in the case of *Creek Nation* v. *United States*, 97 Ct. Cl. 591; 63 S. Ct. 71; wherein the Court held, "The provision of the Statute 34 Stat. 137, Section 18, which provides that the Secretary of the Interior is hereby authorized to bring

suit in the name of the United States" for the use of the Five Civilized Tribes, "for the collection of any moneys or recovery of any land claimed by any of the Tribes", is permissive only and creates no liability on the part of the defendant in case the Secretary failed to do so." Sustains our position that this provision is not exclusive.

Our point, of the procedure, is, that, the District Court did not notify the Tribe by serving notice on the Chief or Governor, or any other person, and while the Court signed the Dismissal with Prejudice, the Tribe of Indians were not mentioned, and where the present court erred was in construing this dismissal as *res judicata* against the Indians, and the Circuit Court in sustaining said judgment, without the court, in the first instance, or the plaintiff or any one in the case having served the required notice; and that they can not be bound by such procedure.

REASON NO. 5. THAT THE CIRCUIT COURT OF APPEALS OF THE TENTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF LAW IN A WAY PROBABLY UNTENABLE OR IN CONFLICT WITH THE WEIGHT OF AUTHORITY

In this case, after deciding that the Federal Court had jurisdiction and that there was no error in refusing to remand the case to the State Court, the Circuit Court of Appeals reached the ultimate conclusion of law that the action was barred by the judgment of the District Court of the Northern District of Oklahoma in case No. 14 Equity in that Court.

This case, No. 14 was an action brought by the United States on behalf of or for the benefit of the Creek Tribe or Nation of Indians. It involved the same allotment as the case at bar, but the parties in the case were not the same as in the instant case. Neither the Creek

Tribe or Nation, the Creek Indian National Council, nor the individual members of the Creek Tribe or Nation, were made parties to the action.

The Circuit Court of Appeals held that the judgment in that action was a bar to the present action on the theory that the Creek Tribe or Nation was barred because the United States brought the action in No. 14 Equity on behalf of said Creek Nation, and that a judgment against the United States was a bar against the Creek Nation, and being such a bar was also a bar against any action by the Creek Indian National Council, or the individual members of the tribe. This was based upon the theory that any claim the Council or the individual Indians might have would have to be based on the right of the Tribe or Nation to the lands in question.

This reasoning is sound only to the extent that the original premise is sound, that is; that the Creek Tribe or Nation was bound by the judgment in No. 14 Equity. If the Creek Nation was not bound no one claiming under or through it would be bound.

To support this ultimate conclusion of law the Court relied upon the following cases which are all the cases cited by the appelles in their brief in the Circuit Court of Appeals, to-wit:

Conner v. *Cornell*, 32 Fed. (2d) 581;

Mars v. *McDougal*, 40 Fed. (2d) 247;

Vinson v. *Graham*, 44 Fed. (2d) 772;

Heekman v. *United States*, 244 U. S. 413, 56 L. ed. 820;

Folk v. *United States*, 233 Fed. 177.

An examination of these cases discloses that none of them are in joint with the case at bar, that is, in none

of them are in point with the case at bar, that is, in none or Nation is bound by a judgment against the United States in an action in which the Creek Tribe or Nation is not a party to the action.

In the case of *Conner* v. *Cornell, supra*, the suit was brought by the United States on behalf of an individual allottee, and the court held that the individual allottee was bound by a judgment on a dismissal with prejudice by the United States.

In the case of *Mars* v. *McDougal, supra*, the same situation obtained although in the case the grantor was a party to the action and was naturally bound by the judgment.

In the case of *Vinson* v. *Graham, supra*, the suit was brought by the United States on behalf of Individual Indians, and not on behalf of the tribe or nation.

In the case of *Heekman* v. *United States, supra*, which was the case mainly relied upon by the appellees, the Tribe or Nation was not a party nor were the individual Indians, but the suit was brought by the United States on behalf of certain individual Indians. Also in this case the question of whether or not the judgment of dismissal was binding upon the individual Indians was not raised by the Indians but by their grantees.

Many more cases could be cited to the same effect. In fact during the period in which the above cases were decided there seemed to be a regular avalanche of cases in which the United States had started suits to recover individual allotments for Indians and subsequently ordered them dismissed with prejudice, and in subsequent suits these dismissals were urged as their sole defense by the defendant grantees.

Also in all these cases the United States might be said to have a sufficient right to maintain the actions

because all the actions concerned transfers made in violation of restrictions upon alienation imposed by Congress.

In the present action the United States had no interest except in correcting the rolls upon which the allotment was based. It would have no more interest than it would have in any case involving a patent to land.

In the case of *Folk* v. *United States, supra*, the Creek Tribe was a party to the action and it can thus be distinguished from the present case. Moreover no question of *res judicata* arose in the Folk case.

As we stated, none of these cases even touch upon the point as to whether the judgment in the No. 14 Equity was binding upon the Creek Tribe or Nation. As a matter of fact we have been able to find no cases at all decided upon that point. Appellees state that they have cited no cases to the effect that the Creek Indians National Council or the individual members of the tribe are bound (p. 37 Circuit Court of Appeals Brief), but argue by analogy that they must be bound because the Nation or Tribe is bound. That begs the whole question by assuming that the Creek Tribe or Nation is bound by the judgment in No. 14 Equity.

Now we come to the real question, as to whether or not the Tribe or Nation is bound by that judgment.

In the first place, the right of the United States to represent the tribe or nation is on a different footing from the right to represent the individual Indian whose land has been alienated in violation of restrictions imposed by Congress. The right to represent is given by different Statutes and is based upon different principles. Also the relation between the United States and the tribes or nations is different from the relation to the individual Indian. In its relation to the tribe or nation the United States deals with the tribes more or less on an equal footing, or somewhat on the basis of Trustee and *Cestui*

Que Trustents, as is pointed out by appellees in their brief (p. 37 Circuit Court of Appeals brief). In the case of the individual Indians the relation is more that of guardian and ward, and here the United States also has the additional interest of seeing that its restrictions upon alienations are enforced.

If the relation between the United States and the Tribes is that of Trustee and *Cestui Que Trust*, that relation should be governed by the laws applicable to such relationship. The general rule is that in all proceedings affecting the trust estate the Trustee and the *Cestui Que* Trust, are so far independent of each other that the latter must be made a party to the suit in order to be bound by the judgment or decree rendered therein. Hence a judgment against the trustee alone, the beneficiary not being a party thereto, does not bind the latter as a general rule.

> *Carey* v. *Brown*, 92 U. S. 171, 23 L. Ed. 469.

But we do not have to rely upon general principles of law in this case for the reason that the whole question is a matter of the interpretation of two Acts of Congress dealing with the same subject.

There are in existence two seperate Acts which both deal with suits affecting the property of any Tribe of Indians. The first of these Acts is the Curtis Act. Stat. L. 495, Section 2, which provides:

> "That when in the progress of any civil suit either in law or equity, pending in the United States Court in any district in said (Indian) Territory, it shall appear to the Court that the property of any tribe is any way affected by the issues being heard, said Court is hereby authorized and required to make said tribe a party to said

> suit by service upon the Chief or Governor of the Tribes and the suit shall thereafter be conducted and determined as if said Tribe had been an original party to said action."

It will be noted that this Act makes it mandatory for the court to make the tribe a party whenever it appears that the suit affects the property of any Tribe of Indians. The purpose of this section is evidently two fold. In the first place it gives the tribe an opportunity to protect its interest in its property through its own chosen representatives; and in the second place by making the tribe a party such tribe would be bound by the judgment rendered in the case.

It naturally follows that if the Court failed to make the tribe a party to any suit affecting the property of the tribe, the tribe would not be bound by any judgment rendered in such action.

The other Act dealing with this subject is Section 18 of the Act of April 6, 1906, which provides:—

> "That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States for the use of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes, respectively either before or after the dissolution of the Tribal Governments, for the collection of any moneys or the recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting said suits."

It is our contention that these two Acts of Congress should be construed together under the doctrine of *pari materia.*

In Vol. 24 Ruling Case Law Sec. 285, the text reads as follows:—

> "It is a fundamental rule of Statutory construction that not only should the intention of the law maker be deduced from a view of the whole statute and of its every material part, but statutes in *pari materia* should be construed together. This means that, for the purpose of learning and giving effect to the legislative intention, all statutes relating to the same subject are to be compared, even though some of them have expired or been repealed, and so far as still in force, so construed in reference to each other that effect may be given to all the provisions of each if that can be done by any fair and reasonable construction."

The following cases support this statement.

United States v. *Morris*, 10 Wheat 246, 6 Law Ed. 614;

United States v. *Freeman*, 3 How. 556, 11 Law Ed. 724;

Harrison v. *Vose*, 9 How. 372, 13 Law Ed. 179;

United States v. *Walker*, 22 How. 299, 16 Law Ed. 382;

United States v. *Babbit*, 1 Black 55, 17 Law Ed. 94;

Confiscation Cases 7 Wall 454, 19 Law Ed. 196;

United States v. *Taylor*, 112 U. S. 50, 28 Law Ed. 656;

United States v. *Central Pac. Ry. Co.*, 118 U. S. 235, 30 Law Ed. 173;

United States v. *Munday*, 222 U. S. 175, 56 Law Ed. 149;

Vane v. *Newcomber*, 132 U. S. 220, 33 Law. Ed. 310.

There are no conflicts in any particular between the two Acts in question in this case.

When the United States commences suit under Sec. 18 of the Act of 1906 and it appears from the bill that the property of any of the tribes is affected then it becomes mandatory upon the Court to make the tribe whose property is affected a party to the action by having process served upon the Chief or Governor of the tribe. The action in case No. 14 Equity, certainly involved and affected property of the Creek Tribe and this fact was disclosed by the bill in equity filed by the United States. At that point the Court should have made the tribe a party and since this was not done the tribe was not bound by any judgment rendered in the action and hence the plaintiffs in this case were not bound. They could not be bound as claiming under the Creek Tribe since the Tribe was never made a party to the action as required by law, and they could not be bound by the action of the government, as the government did not pu port to represent them in the action but brought the suit only on behalf of the tribe.

These two Acts must be construed together and effect given to each in so far as they are not in conflict, as they are both in force and effect. In the cases relied upon by the Circuit Court of Appeals and the District Court the situation was a different one entirely. In those cases there were not statutes requiring that the individual Indians be made parties to the action.

The second section of the Act of June 28, 1898 applies only to suits affecting the property of tribes and not suits affecting the property of individuals.

There can be no question that the Creek Tribe was never made a party in No. 14 Equity. The record shows this, and the only contention appellees make on the point is that it was not necessary, as Section 18 of the Act of 1906 supercedes Sec. 2 of the Act of June 28, 1898. We believe that they are wrong, and that every sound principle of interpretation and application of the two Acts, and of justice and right, upholds our position — that in order for the *Order* of dismissal of the old 14 Equity case to have bound the Creek Tribe or the individual members thereof, the District Court should have followed the law and made them a party to the suit.

Wherefore your petitioners ask this Honorable Court to grant the *Writ of Certiorari* for the reasons set out herein.

Respectfully submitted,

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Of Counsel for Petitioners on Brief.

October, 1944.

No. 619

In the Supreme Court of the United States

October Term, 1944.

THE CREEK INDIANS NATIONAL COUNCIL, BY C. W. WARD, PRESIDENT, AND WASHINGTON ADAMS, SECRETARY-TREASURER, FOR AND ON BEHALF OF THEMSELVES AND 18,765 OTHER MEMBERS OF THE CREEK TRIBE OF INDIANS, AND THEIR HEIRS,

Petitioners,

vs.

SINCLAIR PRAIRIE OIL COMPANY, A CORPORATION, H. G. BARNARD, N. B. FEAGAN, ARCH H. HYDEN, AS ADMINISTRATOR WITH WILL ANNEXED OF THE ESTATE OF SARAH C. GETTY, DECEASED, AND BARDON OIL COMPANY,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI.*

EDWARD H. CHANDLER,
RALPH W. GARRETT,
SUMMERS HARDY,
CLAUDE H. ROSENSTEIN,
JOHN ROGERS,
CARTER SMITH,
Tulsa, Oklahoma,

Counsel for Respondents.

Of Counsel:
ROBERT L. IMLER,
Tulsa, Oklahoma.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term 1944.

No. 619

THE CREEK INDIANS NATIONAL COUNCIL, BY C. W. WARD, PRESIDENT, AND WASHINGTON ADAMS, SECRETARY-TREASURER, FOR AND ON BEHALF OF THEMSELVES AND 18,765 OTHER MEMBERS OF THE CREEK TRIBE OF INDIANS, AND THEIR HEIRS,

Petitioners,

vs.

SINCLAIR PRAIRIE OIL COMPANY, A CORPORATION, H. G. BARNARD, N. B. FEAGAN, ARCH H. HYDEN, AS ADMINISTRATOR WITH WILL ANNEXED OF THE ESTATE OF SARAH C. GETTY, DECEASED, AND BARDON OIL COMPANY,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI.*

The respondents believe that the opinion of the United States Circuit Court of Appeals set forth the record and the facts, save and except that it is necessary, by reason of contentions made by petitioners, to consider the following additional facts:

Supplemental Statement.

With respect to the sustaining of the motion for summary judgment (R. 116), said motion was supported not only by the record in the case of *United States* v. *Sinclair Oil and Gas Company, et al.,* No. 14 Equity, but also by the amended complaint (R. 87), motion of defendant to dismiss (R. 103), and order of dismissal (R. 105) in the case of *Creek Nation of Indians* v. *Nancy Barnett, et al.,* No. 367 Civil.

After judgment was rendered against the United States in No. 14 Equity on December 14, 1925, and, to-wit, on October 25, 1940, the Creek Nation of Indians, by Alex Noon, Principal Chief, brought suit against the respondent herein in the United States District Court for the Northern District of Oklahoma, being No. 367 Civil in said court, and made the same claim for relief based upon the same facts as was made in No. 14 Equity (R. 87). Respondent Sinclair Prairie Oil Company (formerly Sinclair Oil and Gas Company) filed its motion to dismiss the amended complaint of the Creek Nation of Indians on November 4, 1940 (R. 103), and on January 22, 1941, said motion to dismiss said amended complaint was sustained (R. 105). In the amended complaint in No. 367 the Creek Nation of Indians alleged that the dismissal with prejudice in No. 14 Equity was not effective to dispose of said cause upon the merits (R. 93-94) because notice was not given to the Creek Tribe in accordance with Section 2 of the Curtis Act of June 28, 1898 (30 Stat. 495). No appeal was ever taken from this judgment. This judgment in No. 367 Civil was relied upon as well as the judgment in No. 14 Equity as being conclusive of the present controversy.

Petitioners now for the first time contend that the "No-

tice of Application for Removal" shows that it was not served upon the plaintiffs or their attorney of record. But the District Court of Creek County, Oklahoma, in its order of removal, found that petitioners were served (R. 33), and further, that petitioners appeared at the removal proceedings in the state court and objected and excepted to the order of removal, as is shown by the minutes of the court clerk of Creek County, Oklahoma (R. 73), and the order of removal aforesaid.

Certificate of the court clerk for the United States District Court for the Northern District of Oklahoma filed herewith (a copy of which is "Exhibit A" hereto) in the office of the clerk of this court, shows that the transcript on removal of the removal proceedings had in the state court and now on file in the office of the court clerk for the United States District Court for the Northern District of Oklahoma shows that "W. R. Kerr," attorney for plaintiffs (petitioners here) was served with notice of filing of said petition and bond for removal prior to the making of the order of removal by the state court, and that by inadvertence and mistake this service was not shown in the record of this case prepared for the United States Circuit Court of Appeals for the Tenth Circuit.

Respondents have requested petitioners to stipulate that service was made as shown by the certificate of the court clerk aforesaid but petitioners refused to so stipulate.

BRIEF.

We shall undertake to reply to the brief of petitioners in the order that said propositions are raised by them, and in order to identify these propositions we shall refer to them in the manner referred to by petitioners.

The record with respect to the notice of application for removal is sufficient to sustain the jurisdiction of the Federal Court.

This question is raised under petitioners' "*Reason Relied on No. 1.*" This presents the contention that the record as originally filed in this court fails to show that service of the notice of application for removal was had upon the plaintiffs or their attorney of record. The facts with reference to this are shown by "Exhibit A"; it therefore has no merit. If for any reason this exhibit is not properly before this court, this proposition, raised for the first time in this court, is without merit.

While Section 29 of the Judicial Code (Title 28, Sec. 72, U. S. C. A.) requires that written notice of the removal petition and bond shall be given the adverse party or parties prior to filing the same, no method of proof of service is prescribed. The finding of the state court at the time of the presentation to it of removal petition and bond that notice had been given should therefore be sufficient.

Furthermore, while many cases in inferior federal tribunals have held that the giving of this notice is mandatory, it is not jurisdictional but modal and formal and can be waived.

This court has held that Section 28 of the Judicial Code (Title 28, Sec. 71, U. S. C. A.) defines the cases in which removal may be made; and Sec. 29 (Title 28, Sec. 72, U. S. C. A.) provides the procedure for removal and the time in which it should be applied for. It was further held that the requirements of Sec. 28 are jurisdictional, can be raised at any time, and cannot be waived, whereas the requirements of the modal and formal section can be waived.

—*Ayers* v. *Watson*, 113 U. S. 594, 28 L. ed. 1093;

Gerling v. *Baltimore & Ohio R. R. Co.*, 151 U. S. 673, 38 L. ed. 311.

The petitioners in this case have waived this point for the reason that they do not raise it in their motion to remand. While the motion to remand does say that the court had no jurisdiction under said attempted removal and that the court is without jurisdiction of the subject-matter of the action, this objection not being jurisdictional is not raised by said grounds in said motion to remand.

If this notice of removal were deemed to be jurisdictional, which it is not, the finding of the state court that it had been served according to law would be conclusive, for it is the duty of the state court before it surrenders its jurisdiction to determine on the record before it whether the case is a removable one, and in so determining it would be necessary to determine whether the notice had been given.

—*Madisonville Traction Co.* v. *St. Bernard Mining Co.*, 196 U. S. 239, 49 L. ed. 462;

Stone v. *South Carolina*, 117 U. S. 430, 29 L. ed. 962.

In addition, the plaintiffs were present in the state court, as shown by the minute of the court wherein it was shown that they excepted, and being thus present, the purpose of the law has been served.

—*French* v. *United Gas Public Service Co.*, (D. C. W. D. La.) 16 Fed. Supp. 837;

Pyatt v. *Prudential Ins. Co.*, (D. C. W. D. Mo.) 38 Fed. Supp. 527;

Bank of America v. *United States National Bank*, (D. C. S. D. Cal.) 3 Fed. Supp. 990.

The facts set forth in the removal petition are sufficient to sustain the jurisdiction of the Federal Court and to justify the overruling of the motion to remand.

The contentions in this respect are set forth under "*Reason Relied on No. 2.*" This consists of a number of arguments with respect to the overruling of the motion to remand, and, without attempting to follow in detail petitioners' method of approach, we will answer their contentions.

No effort was made to remove this cause under "Mason's Code, Sec. 30, being U. S. Code, Title 28, Sec. 73." This cause was removed on the grounds that the petition stated what is commonly denominated a Federal question, and that there is set forth in the petition a controversy wholly between citizens of different states which can be fully determined between them; that is, a separable controversy. The Circuit Court of Appeals in its opinion held that a Federal question was stated but did not pass on whether or not the only defendant appearing or served could remove for this reason. It is still our position that one party could remove on the ground of the existence of a Federal question, in view of the language of Sec. 28 of the Judicial Code (Title 28, Sec. 71, U. S. C. A.), as follows:

> "Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the District Courts of the United States are given original jurisdiction, in any state court, may be removed *by the defendant or defendants therein* to the District Court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the District Courts of the United States are given jurisdiction, in any state court, may be removed into the District Court

of the United States for the proper district *by the defendant or defendants therein,* being nonresidents of that state."

In view of the fact that it has been held that the only defendant served or appearing may remove under the second clause italicized above—*Pullman Co.* v. *Jenkins,* 305 U. S. 534, 83 L. ed. 334—we think clearly such one defendant could remove under the first clause above italicized.

Chicago, R. I. & P. Ry. Co. v. *Martin,* 178 U. S. 245, 44 L. ed. 1055:

> "This being so the case came solely within the first clause of the section, and we are of the opinion that it was not intended by Congress that, under such circumstances, there should be any difference between the rule applied under the first and second clauses of Section 2 of the Act of 1887-8."

The overruling of the motion to remand was sustained by the Circuit Court of Appeals on the ground that the petition sets forth a separable controversy, and the opinion of that court covers the facts and the law with respect to this proposition.

The separable controversy stated is one between citizens of Oklahoma and Minnehoma Oil Company and Minnehoma Oil and Gas Company, citizens of Arizona, Reserve Petroleum Company and Reserve Development Company, citizens of Delaware, and Sinclair Prairie Oil Company, a citizen of Maine. The case was removed by Sinclair Prairie Oil Company, which was the only defendant served or appearing and comes squarely within the principle of *Pullman Co.* v. *Jenkins, supra.*

In their brief petitioners have attempted to have the court consider, in determining whether there was a proper

removal, matters which appear in the record after the case was removed. The removability of a case is to be determined according to plaintiffs' pleadings at the time of the petition for removal. *Pullman Co.* v. *Jenkins, supra.*

We are making no answer to "Reason Relied on No. 3," as no argument is presented by petitioners in support thereof.

Notice was not required to be served upon the Chief or Governor of the Creek Tribe in Cause No. 14 Equity.

(This is in reply to "Reason Relied on No. 4.")

The petitioners here rely on Section 2 of the Act of Congress of June 28, 1898 (30 Stat. 495), known as the Curtis Act, which section is set forth at page 15 of their brief. The later Act of April 26, 1906, Section 18 (34 Stat. 137), set forth in petitioners' brief at page 21, was clearly intended to provide a more effective method of protecting the interests of the Creek Tribe by having the Secretary of the Interior authorized to bring suit in the name of the United States for the use of the Creek Tribe. There is nothing in this section that indicates that any notice to any official of the Creek Nation is necessary, and such notice would, in fact, be a useless formality for the reason that the United States is appearing for the Creek Nation; the Creek Nation is therefore a party to the litigation and for that reason would not have to be notified. *Heckman* v. *United States,* 224 U. S. 413, 32 S. C. 424, 56 L. ed. 820, was a case where the United States brought suit on behalf of individual allottees of the Five Civilized Tribes under an analogous statute, and in which it was urged that the individual Indian had to be before the court. This court said:

> "The argument necessarily proceeds upon the assumption that the representation of these Indians by

the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents, whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indians' acquiescence. It does not rest upon convention nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.

"When the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the Act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion

that the United States is entitled to sue, and in the nature and purpose of the suit."

As was pointed out by the Circuit Court of Appeals in its opinion in this cause, the suit by the Government in No. 14 Equity was not only in its own right, but also for and in behalf of the Creek Tribe of Indians. Furthermore, as has been heretofore pointed out in the additional statement of facts herein, this question was pleaded in *Creek Nation of Indians* v. *Sinclair Prairie Oil Company, et al.,* No. 367 Civil, and a judgment was entered against the Creek Nation which was unappealed from; therefore this question of notice has been adjudicated, and the adjudication is, as has been pointed out in such additional statement of facts, a matter of record in this cause.

The petitioners are bound by the judgment in Equity No. 14 and the judgment in Civil No. 367.

(This is in reply to petitioners' "Reason No. 5.")

The Circuit Court of Appeals found that the facts on which relief is asked for and the relief asked for in Equity No. 14 are the same as in the case at bar; this also can be said of Civil No. 367. We are not clear as to whether it is petitioners' contention that the Creek Nation or Tribe is not bound by the judgments, attached to the motion for summary judgment as exhibits (R. 82-105), in said two former causes above, or whether it is also their contention that even if the Creek Nation is bound, the individual members of the tribe are not bound. In either case, the Circuit Court of Appeals in its opinion in this cause adequately answers their contention. We again wish to call attention to *Heckman* v. *United States, supra,* wherein it is said:

"These considerations also dispose of the contention that, by reason of the absence of the grantors as

parties, the grantees are placed in danger of double litigation; so that if they should succeed here, they would still be exposed to suit by the allottees. It is not pertinent to comment upon the improbability of the contingency, if it exists in legal contemplation. But if the United States, representing the owners of restricted lands, is entitled to bring a suit of this character, it must follow that the decree will bind not only the United States, but the Indians whom it represents in the litigation. This consequence is involved in the representation. *Kerrison* v. *Stewart,* 93 U. S. 155, 160, 23 L. ed. 843; *Shaw* v. *Little Rock & Ft. S. R. Co.,* 100 U. S. 605, 611, 25 L. ed. 757, 758; *Beals* v. *Illinois M. & T. R. Co.,* 135 U. S. 290, 295, 33 L. ed. 608, 611, 10 Sup. Ct. Rep. 314. And it could not, consistently with any principle, be tolerated that, after the United States, on behalf of its wards, had invoked the jurisdiction of its courts to cancel conveyances in violation of the restrictions prescribed by Congress, these wards should themselves be permitted to relitigate the questions."

The principles in that case under an analogous statute are applicable here. See also:

Vinson v. *Graham,* (C. C. A. 10) 44 F. (2d) 772, cert. den. 283 U. S. 820, 75 L. ed. 1435;

Mars v. *McDougal,* (C. C. A. 10) 40 F. (2d) 247, cert. den. 282 U. S. 850, 75 L. ed. 753;

Conner v. *Cornell,* (C. C. A. 8th, 1929) 32 F. (2d) 581, cert. den. 280 U. S. 583, 74 L. ed. 632.

As to the authority of the Attorney General of the United States to dismiss with prejudice, see:

Conner v. *Cornell, supra;*

Mars v. *McDougal, supra.*

The case of *Carey* v. *Brown,* 92 U. S. 171, 23 L. ed. 469, while it states the general rule as set forth in petitioners'

brief, also sets forth as an exception to this general rule that, where the suit is brought by the trustee to recover the property or to reduce it to possession, and it in nowise affects his relation with his *cestuis que trustent,* it is unnecessary to make the latter parties. This is the case here.

Conclusion.

Respondents respectfully contend that the decrees entered by the trial court and the Circuit Court of Appeals for the Tenth Circuit are correct under the authorities and reasons herein and therein set forth, and that no substantial or meritorious question is presented for review; therefore the petition for writ of *certiorari* should be denied.

Dated this 9th day of November, 1944.

Respectfully submitted,

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"Exhibit A."

In the United States District Court for the Northern District of Oklahoma. The Creek Indians National Council by C. W. Ward, President, and Washington Adams, Secretary-Treasurer, for and on behalf of themselves and 18,765 other members of the Creek Tribe of Indians, and their heirs, Plaintiff, vs. Nancy Barnett, Sinclair Prairie Oil Company, a corporation, H. G. Barnard, N. B. Feagan, Arch H. Hyden, as Administrator with will annexed of the Estate of Sarah C. Getty, deceased; and Bardon Oil Company, et al., Defendants.—No. 927 Civil.

United States of America, Northern District of Oklahoma —ss:

I, H. P. Warfield, Clerk of the United States District Court for the Northern District of Oklahoma, do hereby certify that the transcript for removal of the above cause, duly certified by the Court Clerk in and for Creek County, Oklahoma, and on file in this court, shows a notice of application for removal and as a part thereof further shows the following:

"Service of the above and foregoing Notice with Exhibits attached is hereby acknowledged this 23rd day of November, 1942.

W. R. Kerr,
Attorney for Plaintiffs."

That if the record certified to by me on the 10th day of August, 1943, and filed in the United States Circuit Court of Appeals for the Tenth Circuit shows the following:

"Service of the above and foregoing Notice with Exhibits attached is hereby acknowledged this 23rd day of November, 1942.

....,
Attorney for Plaintiffs,"

the name of W. R. Kerr was omitted through inadvertence and mistake.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Tulsa, Oklahoma, this 1st day of November, 1944.

H. P. WARFIELD, Clerk,

(Seal) By M. M. EWING, Deputy.